

ASSEMBLY BILL

No. 2217

Introduced by Assembly Member Fuentes

February 18, 2010

An act to amend Sections 611 and 613 of the Code of Civil Procedure, and to amend Sections 1122 and 1128 of the Penal Code, relating to jurors.

LEGISLATIVE COUNSEL'S DIGEST

AB 2217, as introduced, Fuentes. Jurors: electronic communications.

Existing law requires the court in a jury trial to admonish the jury that it is their duty not to converse with, or permit themselves to be addressed by, any other person on any subject of the trial. The court is required to provide the admonishment in a civil proceeding when the jurors are permitted to separate during the trial, and when the case is submitted to the jury, and, in a criminal proceeding, after the jury has been sworn and before the people's opening address, at each adjournment of the court, and when the jurors are permitted by the court to separate after the case is submitted to the jury. An officer having the jury under his or her charge shall not permit any communication to be made to them, or make any himself or herself, as specified.

This bill would require the court, when admonishing the jury against conversation pursuant to these provisions, to clearly explain, as part of the admonishment, that the prohibition on conversation applies to all forms of electronic and wireless communication. The bill would require the officer in charge of a jury to prevent any form of electronic or wireless communication.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 611 of the Code of Civil Procedure is amended to read:

611. If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the ~~Court~~ court that it is their duty not to converse with, or ~~suffer permit~~ themselves to be addressed by, any other person; on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them. *The court shall clearly explain, as part of the admonishment, that the prohibition on conversation applies to all forms of electronic and wireless communication.*

SEC. 2. Section 613 of the Code of Civil Procedure is amended to read:

613. When the case is finally submitted to the jury, they may decide in ~~Court~~ court or retire for deliberation; ~~if~~. *If they retire, they must be kept together; in some convenient place, under charge of an officer, until at least three-fourths of them agree upon a verdict or are discharged by the ~~Court~~ court. Unless by order of the ~~Court~~ court, the officer having them under his or her charge must shall not-suffer permit any communication to be made to them, including any form or electronic or wireless communication, or make any himself or herself, except to ask them if they or three-fourths of them are agreed upon a verdict, and he must. The officer shall not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.*

SEC. 3. Section 1122 of the Penal Code is amended to read:

1122. (a) After the jury has been sworn and before the people's opening address, the court shall instruct the jury generally concerning its basic functions, duties, and conduct. The instructions shall include, among other matters, *all of the following* admonitions ~~that~~:

(1) *That the jurors shall not converse among themselves, or with anyone else, on any subject connected with the trial; that. The court shall clearly explain, as part of the admonishment, that the prohibition on conversation applies to all forms of electronic and wireless communication.*

1 (2) *That* they shall not read or listen to any accounts or
2 discussions of the case reported by newspapers or other news
3 media; ~~that~~.

4 (3) *That* they shall not visit or view the premises or place where
5 the offense or offenses charged were allegedly committed or any
6 other premises or place involved in the case; ~~that~~.

7 (4) *That* prior to, and within 90 days of, discharge, they shall
8 not request, accept, agree to accept, or discuss with any person
9 receiving or accepting, any payment or benefit in consideration
10 for supplying any information concerning the trial; ~~and that~~.

11 (5) *That* they shall promptly report to the court any incident
12 within their knowledge involving an attempt by any person to
13 improperly influence any member of the jury.

14 (b) The jury shall also, at each adjournment of the court before
15 the submission of the cause to the jury, whether permitted to
16 separate or kept in charge of officers, be admonished by the court
17 that it is their duty not to converse among themselves, or with
18 anyone else, on any subject connected with the trial, or to form or
19 express any opinion thereon until the cause is finally submitted to
20 them. *The court shall clearly explain, as part of the admonishment,*
21 *that the prohibition on conversation applies to all forms of*
22 *electronic and wireless communication.*

23 SEC. 4. Section 1128 of the Penal Code is amended to read:

24 1128. After hearing the charge, the jury may either decide in
25 court or may retire for deliberation. If they do not agree without
26 retiring for deliberation, an officer ~~must~~ *shall* be sworn to keep
27 them together for deliberation in some private and convenient
28 place, and, during ~~such~~ *the* deliberation, not to permit any person
29 to speak to or communicate with them, *including any form or*
30 *electronic or wireless communication*, nor to do so himself *or*
31 *herself*, unless by order of the court, or to ask them whether they
32 have agreed upon a verdict, and to return them into court when
33 they have so agreed, or when ordered by the court. The court shall
34 fix the time and place for deliberation. The jurors shall not
35 deliberate on the case except under ~~such~~ *those* circumstances. If
36 the jurors are permitted by the court to separate, the court shall
37 properly admonish them *as provided in subdivision (b) of Section*
38 *1122.* ~~When~~ *If* the jury is composed of both men and women, and
39 the jurors are not permitted by the court to separate, in the event
40 that it ~~shall become~~ *becomes* necessary to retire for the night, the

- 1 women ~~must~~ *shall* be kept in a room or rooms separate and apart
- 2 from the men.

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